IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3012 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MR.JUSTICE K.M.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ? No

2 To be referred to the Reporter or not ? No

3 Whether their Lordships wish to see the fair copy of the judgment ? No

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? No

5 Whether it is to be circulated to the civil judge ? No

==========

SALMABANU ABDUL RAZAK KURESHI - Appellant(s)
Versus
LALITBHAI LAXMISHANKAR DAVE & 5 - Defendant(s)

==========

Appearance :

MR BHARAT B SHAH for Appellant(s) : 1,
NOTICE SERVED BY DS for Defendant(s) : 1 - 4,
MR PV NANAVATI for Defendant(s) : 2,
DS AFF.NOT FILED (N) for Defendant(s) : 3 - 6
MR MAULIK J SHELAT for Defendant(s) : 5,

==========

CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 9/10/2006

C.A.V. JUDGMENT

(Per : HONOURABLE MR.JUSTICE K.M.MEHTA)

1. This appeal is directed against the judgement and award dated 28.2.2005 passed by the Motor Accident Claims Tribunal (Auxiliary-3), Ahmedabad (Rural) at Navrangpura in M.A.C. Petition No. 52 of 1994.

2. The claimant Salmabanu Abdul Razak Kureshi of claim petition No. 52 of 1994 has filed this application for recovery of compensation of Rs. 12 lakhs for the injuries caused to her in the alleged vehicular accident under Motor Vehicles Act. It was contended in the claim petition that the claimant had gone to Ajmer, Khawaja Garib Navaz, for religious purpose in Mini Luxury Bus bearing registration No. GJ I-V 1236. In the said vehicle, they were returning on 26.8.1993 and when they were passing over Ahmedabad-Himatnagar National Highway Road No. 8 at that time between Chandra-Mahadevpura Patiya at about 00.30 hours on 27.8.1993 i.e. on 26.8.1993 midnight, one truck bearing registration No. RRY 7056 came from the opposite direction and dashed with the Mini Luxury Bus in which the claimant was travelling as a passenger.

3. In the aforesaid background Salmabanu Abdul Rajak Kureshi, claimant, has filed claim Petition No.

52 of 1994 in which it was stated that in the said unfortunate accident the claimant also suffered serious injury. After the occurrence of accident, the claimant had been admitted to Himmatnagar civil Hospital and thereafter shifted into V.S. Hospital, Ahmedabad. On the date of the accident she was aged 25 years old.

4. It may be noted that on the date of accident she was earning Rs. 4,500/- per month by making eatables and selling meat. She had a left leg shaft femur, tibia fibula fracture, knee fracture, wound of 15.3 cm over head and another wound of 12.2 cm. Over right eye and other injuries and in the hospital the operation was performed and she remained in the hospital as indoor patient till long and thereafter she had taken treatment from private Doctor. It was further alleged that the claimant has permanent disability and she suffered a lot of pain, shock and agony during the treatment and the claimant had to incur expenditure in connection with medicine, doctors charges, transportation, special diet and therefore on the basis of all these allegations the claimant claimed compensation of Rs. 12 lakhs from the opponents together with interest and costs.

5. Opponent No. 1 Lalitbhai Laxmishankar Dave, opponent No. 3 Mohanbhai Nathubhai and opponent No. 6 Bantaqnlal Nanjibhai Patel were duly served with the notices but from the record it appears that they did not appear either personally or through their

advocate to contest the petitions. To that extent the matter proceeded ex-parte against the said opponents. While opponent No. 2 New India Insurance Co. Ltd., and opponent No. 5 United India Insurance Co. Ltd., of both the vehicles were also served with the notice and both the Companies appeared through their ld. Advocates and filed their written statement challenging the claim in each petition. In the written statement they denied all facts alleged in the claim petition Exh. 1 like the occurrence of accident, alleged rash and negligent driving of the driver of both vehicles, resultant accident and injuries, cost of the claim and also denied about the income of the claimants in each petition. It was mainly contended by both the Companies that there was a contributory negligence and that the claim of compensation is exaggerated and prayed for dismissal of the petition.

6. The Tribunal has framed two issues, namely, (i) whether the petitioner sustained the injury because of the rash and negligent driving of the vehicle involved in the accident, (ii) whether the petitioner proved that she is entitled to receive compensation as claimed for or any part thereof from the opponents or any of them.

7. The Tribunal held that the petitioner proved that she sustained injuries because of rash and negligent driving of the drivers of the vehicles involved in the accident. The Tribunal further held

that the petitioner is entitled to receive compensation as claimed in the petition.

8 As regards negligence, the learned Judge has relied on copy of the FIR and panchnama report and deposition of the claimants and considering the facts of the panchnama and the arguments of the learned advocate for the parties, the Tribunal has held that both the drivers of the vehicles were equally negligent in driving and because of their rash and negligent driving the accident occurred. The learned Judge thus decided issue No. 1 in favour of the claimants.

9. As regards the second issue, namely, whether the petitioner proved that she is entitled to receive compensation as claimed for or any part thereof from the opponents or any of them - so far as the point of future loss of income is concerned, it is stated that the claimant's working capacity is bound to reduce due to accidental injury. The claimant has given her deposition vide Exh. 110 in which the claimant has stated that she has suffered injury over head and shaft femur fracture and tibia fibula fracture, knee fracture, wound of 15 cm over head. There was lot of bleeding and therefore she had remained unconscious for a long period and she had been admitted to V.S. Hospital as indoor patient for a period of 15 days and due to pus the doctor had advised for amputation of leg. It is further stated that due to the said injury she had to take treatment from private

hospital and the lower portion of the body is totally useless and it is required dressing daily and in future the leg is required to be amputated. It was further stated that the blood circulation is not properly working in both the legs and since 3 years she had been bedridden. At present she is not able to walk, she is not able to lift weight and for the last 10 years she is walking with the help of crutches and with the help of two persons. She has frequent unconsciousness. She is facing difficulties in walking, sitting etc. It is stated that on the date of the accident she was aged 24 years and earning Rs. 4,500/- by making eatables from mutton and by selling it. During the course of her cross-examination it is admitted that the claimant has not produced any document to prove her income. The claimant has produced disability certificate of Dr. A.G. Memon vide Exh. 137 who has assessed disability of the claimant to 70% of the body as a whole and Dr. Balkishan Desai's disability certificate shows mental disability to the tune of 15% vide Exh. 142. The claimant has examined both the Doctors in support of documentary evidence.

10. In view of the aforesaid injuries, the learned Judge has taken notional income of Rs. 1,500/-, the disability of 85% and multiplier of 16 and worked out future loss of income at Rs. 2,44,800/- (85% of Rs. 1500 = Rs. 1275 x 12 months x 16 multiplier). The learned Judge has thus awarded Rs. 2,44,800/- under the head of compensation for

future loss of income.

11. The learned Judge has also awarded Rs. 50,000/- under the head of pain, shock and suffering.

12. Considering the notional income of Rs. 1,500/- per month, the learned Judge awarded Rs. 18,000/- for a period of 12 months towards actual loss of income. The learned Judge further awarded Rs. 20,000/- under the head transportation and special diet. The learned Judge has also awarded Rs. 25,000/- under the head of caretaker charges on lumpsum basis. Regarding medical expenses, the learned Judge after considering documentary evidence, awarded Rs. 2,50,000/- under the head medicine and other charges. Thus the learned Judge awarded in all a sum of Rs. 6,07,800/- with proportionate costs and interest at the rate of 12% per annum from the date of the claim petition till 31.12.1999 and thereafter at the rate of 9% per annum.

13. We have heard Mr. B.B. Shah, learned advocate on behalf of the appellant. We have also gone thorugh the evidence on record. We have also gone through the award passed by the Tribunal. However, in the facts and circumstances of the case , if the award of the Tribunal is modified only in relation to three heads, namely under the head of loss of future income, actual loss of income and attendant charges, the same will be in the interest of justice. The Tribunal has taken notional income at

Rs. 1,500/- per month. However, we take notional income at Rs. 2000/- per month. Thereafter, we take 85% of disability i.e. 85% of Rs. 2000/- which comes to Rs. 1,700/-. Thus the loss of future income is worked out to Rs. 3,26,400 [Rs. 1700 x 12 months x 16 multiplier] as against Rs. 2,44,800/- awarded by the learned trial Judge. Thus additional amount of Rs. 81,600/- is awarded to the appellant under the head of compensation for loss of future income.

14. The learned trial Judge has taken actual loss of income at Rs. 1,500/- per month and awarded Rs. 18,000/- for 12 months. However, in fact of this case, we take actual loss of income at Rs. 2,000/- per month and award Rs. 24,000/- for 12 months. Hence we award additional sum of Rs. 6,000/- under the head of compensation for actual loss of income.

15. As regards attendant charges/medical treatment, the learned trial Judge has awarded Rs. 25,000/-. However, considering the fact that the claimant was bedridden for a long period and that the treatment of injury on the leg continued for a period of one year, it will be in the interest of justice, if we award Rs. 36,000/-. Hence we award additional sum of Rs. 11,000/- under the said head.

16. In view of the above, additional amounts awarded to the appellant by this Court are given in the following tabular form:

	Amounts awarded by the Tribunal Rs.	Amounts awarded by this Court	Additional amount awarded by this Court
Future loss of income	2,44,800/-	3,26,400/-	81,600/-
Actual loss of income for 12 months	18,000/-	24,000/-	6,000/-
Attendant/medical treatment	25,000/-	36,000/-	11,000/-
Pain, shock, sufferings	50,000/-	50,000/-	-
Transportation/ special diet	20,000/-	20,000/-	-
Medicine exps.	2,50,000/-	2,50,000/-	-
Total	6,07,800/-	7,06,400/-	98,600/-

17. We, accordingly, modify the award of the Tribunal and raise the amount of compensation from Rs. 6,07,800/- to Rs. 7,06,400/-. Thus, we award additional amount of Rs. 98,600/- to the claimants with proportionate costs. The additional amount will carry interest at the rate of 9% from the date of the award till the date of deposit.

18. Appropriate orders for investment / disbursement shall be passed by the Tribunal.

In the result, the appeal is partly allowed. The award passed by the Tribunal is modified to the aforesaid extent.

(M.S. SHAH, J)

(K.M. MEHTA, J)

(pkn)